FILED
MAR 9 - 2015
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 14-275

IN THE

Supreme Court of the United States

MARVIN D. HORNE, ET AL.,

Petitioners,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE DKT LIBERTY PROJECT AND THIRTY-THREE INDEPENDENT RAISIN GROWERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

CAROLINE M. DECELL
JENNER & BLOCK LLP
919 Third Ave.
New York, NY 10022
(212) 891-1600

JULIE M. CARPENTER
JESSICA RING AMUNSON
Counsel of Record
JENNER & BLOCK LLP
1099 New York Ave., NW
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTERESTS OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 4

I. The Raisin Marketing Order Does Not Benefit The Growers, But Rather Places A Substantial And Disproportionate Burden On Them. 4

A. The Raisin Marketing Order Imposes A Significant And Disproportionate Burden And Confers Little To No Benefit On Independent Growers. 5

B. The Growers Did Not Choose The Burden Of The Raisin Marketing Order. 13

II. Contrary To The Panel's Decision, The Fifth Amendment Commands That The Growers Receive Just Compensation When The Government Takes Their Raisin Crops. 20

III. If Affirmed, The Ninth Circuit's Decision Could Have Sweeping Ramifications With Debilitating Impacts On Agricultural And Other Small Producers. 26

CONCLUSION 28

APPENDIX A 1a

TABLE OF AUTHORITIES

CASES

Cerajeski v. Zoeller, 735 F.3d 577 (7th Cir. 2013) 22

Evans v. United States, 74 Fed. Cl. 554 (2006), *aff'd*, 250 F. App'x 321 (Fed. Cir. 2007) 5, 6, 7, 26, 27

Gulf Power Co. v. United States, 187 F.3d 1324 (11th Cir. 1999) 25

Hodel v. Irving, 481 U.S. 704 (1987) 20

Kaiser Aetna v. United States, 444 U.S. 164 (1979) 25

Kelo v. City of New London, 545 U.S. 469 (2005) 1

Lion Raisins, Inc. v. United States, 416 F.3d 1356 (Fed. Cir. 2005) 11, 12

Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) 23, 24, 25

Prune Bargaining Ass'n v. Butz, 444 F. Supp. 785 (N.D. Cal. 1975), *aff'd*, 571 F.3d 1132 (9th Cir. 1978) 26

Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection, 560 U.S. 702 (2010) 21

STATUTES AND REGULATIONS

7 U.S.C. § 608c(6)(E) 9

Cal. Com. Code § 2105(1) 21

Cal. Rev. & Tax. Code § 6016 21

Handling of Raisins Produced from Raisin Variety Grapes Grown in California, 14 Fed. Reg. 5136 (Aug. 18, 1949) (codified, as amended, at 7 C.F.R. Part 989) 3

7 C.F.R. § 981.52 26

7 C.F.R. § 981.66(a) 27

7 C.F.R. § 981.66(e) 27

7 C.F.R. § 984.56(a) 27

7 C.F.R. § 984.56(e) 27

7 C.F.R. § 989.53(a) 9

7 C.F.R. § 989.54(a) 6, 8

7 C.F.R. § 989.54(b) 17

7 C.F.R. § 989.54(d) 6, 17

7 C.F.R. § 989.54(g) 8

7 C.F.R. § 989.65 ..... 3, 5, 6

7 C.F.R. § 989.66 3

7 C.F.R. § 989.66(a) 5, 6

7 C.F.R. § 989.66(b)(1) 5, 6

7 C.F.R. § 989.66(b)(4) 6, 7

7 C.F.R. § 989.66(f) 8

7 C.F.R. § 989.66(h) 9

7 C.F.R. § 989.67(b)(2) 7

7 C.F.R. § 989.67(b)(3) 7

7 C.F.R. § 989.67(b)(4) 7

7 C.F.R. § 989.67(c) 7, 8, 9
7 C.F.R. § 989.67(d) 7, 8, 9
7 C.F.R. § 989.67(e) 7, 8, 9
7 C.F.R. § 989.166 14
7 C.F.R. § 993.54 26
7 C.F.R. § 993.57 26
7 C.F.R. § 993.65(a) 27
7 C.F.R. § 993.65(e) 27

OTHER AUTHORITIES

Robert H. Beede & L. Peter Christensen, *Planting a Raisin Vineyard, in Raisin Production Manual* 64 (L. Peter Christensen ed., 2000) 15

William Blackstone, 2 *Commentaries* 21

California: Raisins, Parlier, Rural Migration News, Apr. 2005, *available at* https://migration.ucdavis.edu/rmn/more.php?id=976_0_2_0 16

California Raisins, The California Raisin Industry, http://calraisins.org/about/the-raisin-industry/ (last visited Mar. 5, 2015) 14

L. Peter Christensen, *Background and Resource, in Raisin Production Manual* 7 (L. Peter Christensen ed., 2000) 15

L. Peter Christensen, *Raisin Grape Varieties, in Raisin Production Manual* 38 (L. Peter Christensen ed., 2000) 16

Letter from Thomas Jefferson to Edward Carrington (May 27, 1788) 1

Dan Malcolm, *California Raisin Growers Benefit from Sun-Maid Work*, American Vineyard, Jan. 2015, at 18 12

Clyde E. Nef, *The Raisin Industry Federal Marketing Program, in Raisin Production Manual* (L. Peter Christensen ed., 2000) 8

William L. Peacock & Frederick H. Swanson, *The Future of California Raisins Is Drying on the Vine*, 59 Cal. Agric., no. 2, Apr.-June 2005, at 70, *available at* http://ucanr.edu/datastoreFiles/391-325.pdf 14, 16

Petition for Panel Rehearing or Rehearing En Banc, *Horne v. United States Department of Agriculture*, 673 F.3d 1071 (9th Cir. 2012) (No. 10-15270), ECF No. 30-1 28

Raisin Administrative Committee, *Statement of Disposition & Grower Equity* (Jan. 31, 2013) 9, 10

Raisin Administrative Committee, *Statement of Disposition & Grower Equity* (Apr. 1, 2011) 9, 10

Raisin Administrative Committee, *Statement of Disposition & Grower Equity* (Feb. 19, 2009) 9, 11

Raisin Administrative Committee, *Statement of Disposition & Grower Equity* (Feb. 19, 2009) 9, 11

Raisin Administrative Committee, *Statement of Disposition & Grower Equity* (June 23, 2008) 9, 11

Raisin Administrative Committee, *Statement of Disposition & Grower Equity* 10

Sun-Maid Growers of California, Petition to Amend and Request an Amendment Hearing Applicable to the California Raisin Marketing Order No. 989 or in the Alternative, to Suspend Its Volume Regulation Provisions (U.S. Dep't of Agric., Nov. 17, 2014) 5, 9, 11, 18

Transcript of Oral Argument, *Horne v. United States Department of Agriculture*, 133 S. Ct. 2053 (2013) (No. 12-123) 19

University of California at Davis Cooperative Extension, Sample Costs To Produce Grapes for Raisins (2006), *available at* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCgQFjAB&url=http%3A%2F%2Fcoststudies.ucdavis.edu%2Ffiles%2Fgrraisctoldeqsjv06.pdf&ei=2q4yVKr9CNHlsAS-6oD4Dw&usg=AFQjCNEID0bMGruMQfQ9pXm0FHYHxxFUBQ&sig2=XN7jzTx20A3Pl9R_0Ozlrg&bvm=bv.76802529,d.cWc 15

INTERESTS OF *AMICI CURIAE*

Thomas Jefferson warned that "[t]he natural progress of things is for liberty to yield, and government to gain ground." Letter from Thomas Jefferson to Edward Carrington (May 27, 1788). Mindful of this trend, The DKT Liberty Project was founded in 1997 to promote individual liberty against encroachment by all levels of government. This not-for-profit organization advocates vigilance over regulations of all kinds, particularly those that unduly interfere with the property rights of private individuals. The DKT Liberty Project has participated as *amicus* in this Court several times in the past, including in cases raising government takings issues, such as *Kelo v. City of New London*, 545 U.S. 469 (2005).

Joining The DKT Liberty Project as *amici* are thirty-three independent California raisin growers ("the Growers")[2] whose crops are subject to the Raisin Marketing Order at issue in this case. The Growers produce raisins on small vineyards ranging

---

[1] All parties have consented to the filing of this brief. Petitioners' and Respondent's letters of consent have been filed with the Clerk's office. Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to this brief's preparation or submission.

[2] The Growers are identified individually in Appendix A to this brief ("App. A").

from 15 to 240 acres, which they have tended for an average of over 30 years. Many of the Growers carry on a multi-generational tradition of raisin growing in their families; indeed, some are third- or fourth-generation growers, and others continue family businesses dating back over 100 years. *See generally* App. A.

The Growers expend considerable resources in cultivating and harvesting their raisin crops each year. Only after they have expended these resources and harvested their crops do the Growers receive notice of the "reserve tonnage" of raisins their handlers will be compelled to segregate and then turn over to the Raisin Administrative Committee ("RAC")—an arm of the United States Department of Agriculture—to comply with the requirements of the Raisin Marketing Order at issue in this case. This "reserve tonnage" requirement is established by the RAC on an annual basis and requires that Growers essentially give away a part of their raisin crop to the federal government each year. The Growers often forego not only the profits they would otherwise earn from the sale of those "reserve tonnage" raisins, but also their costs of production. Consequently, many of the Growers have resorted to taking second jobs or even to selling off acreage as a means of financing continued raisin production on what remains of their vineyards. *See* App. A at 1a-8a, 10a-11a, 13a, 15a-16a. The Growers thus have significant personal and economic interests in the outcome of this case.

SUMMARY OF ARGUMENT

The Raisin Marketing Order[3] effectuates a direct, physical taking of a percentage of the Growers' raisin crops. *See* 7 C.F.R. §§ 989.65-66. The Fifth Amendment requires that the Growers receive just compensation for this taking, and the Ninth Circuit panel erred in concluding otherwise. The panel did so based on a fundamental misunderstanding of Petitioners' and the Growers' enterprises and on a corresponding mischaracterization of the challenged reserve requirement as a mere condition on one particular "use" of their raisin crops—a condition that actually conveys some "benefit" to raisin growers. The panel further relied on a distinction between real and personal property that lacks foundation in the relevant case law, and one that proves particularly meaningless in this context.

This Court's precedent does not support the panel's reasoning. The Court should therefore reverse the panel's judgment, clarifying that personal property enjoys the same Fifth Amendment protections as real property and that the government cannot condition entry into the stream of commerce on a willingness to relinquish the right to just compensation. In doing so, the Court would remedy a longstanding constitutional violation that not only

---

[3] *Handling of Raisins Produced from Raisin Variety Grapes Grown in California*, 14 Fed. Reg. 5136 (Aug. 18, 1949) (codified, as amended, at 7 C.F.R. Part 989) ("Raisin Marketing Order" or "Order").

results in a significant hardship to independent raisin growers, but also threatens to infect the regulatory schemes governing many other industries as well.

ARGUMENT

I. The Raisin Marketing Order Does Not Benefit The Growers, But Rather Places A Substantial And Disproportionate Burden On Them.

The Raisin Marketing Order mandates a direct, physical taking of the Growers' raisin crops with no guarantee of compensation, let alone just compensation. Small, independent growers shoulder a disproportionate share of this substantial burden. Raisin handlers—corporations that buy the raisins from growers and pack and prepare the raisins for sale—often receive direct compensation for the work required of them under the Order, as well as export subsidies. Growers do not. Nonetheless, the panel and the government insist that raisin growers receive a "benefit" from being forced to surrender their property under the Order. The panel and the government further assert that the growers voluntarily assume the burdens of the Raisin Marketing Order by choosing to grow raisins. As shown below, however, there is no benefit to the Growers from the Raisin Marketing Order, and the Growers' supposed "choice" to grow raisins was not a choice to surrender their property to the government.

A. The Raisin Marketing Order Imposes A Significant And Disproportionate Burden And Confers Little To No Benefit On Independent Growers.

The unique and "draconian" reserve requirement imposed under the Raisin Marketing Order results in direct financial losses to raisin growers' operations. *Evans v. United States*, 74 Fed. Cl. 554, 555-56 (2006), *aff'd*, 250 F. App'x 321 (Fed. Cir. 2007); *see* Pet. 4-7. Although the Raisin Marketing Order technically applies only to handlers, *see* 7 C.F.R. §§ 989.65, 989.66(a), (b)(1), its negative impact is suffered almost exclusively by growers. *See* Sun-Maid Growers of California, Petition to Amend and Request an Amendment Hearing Applicable to the California Raisin Marketing Order No. 989 or in the Alternative, to Suspend Its Volume Regulation Provisions 2 (U.S. Dep't of Agric., Nov. 17, 2014) [hereinafter Sun-Maid Petition] ("It is recognized that technically, the Order regulates handlers. But it must also be recognized that our grower-members are economically impacted by the Order's provisions.").

The panel's view that the Raisin Marketing Order provides some "benefit" to raisin growers, either from contingent compensation or from supposed market stabilization, Pet. App. 21a-22a, is simply incorrect as a matter of fact; as a matter of law, it cannot support the government's taking in any event. In view of the numerous years during which growers received no compensation at all for the reserve raisins, and of the raisin industry's successes in more

recent years during which no reserve requirement has been imposed, it is unclear what, if any, "benefit" the Raisin Marketing Order provides. As long as the Raisin Marketing Order still stands, however, the threat of a reserve requirement—and with it, the burden of economic uncertainty—remains.

1. As further explained below, the raisin-growing cycle is such that raisin growers normally harvest their raisins in late August or September. *See infra* at 16. The raisins are then delivered to raisin "handlers," who pack the raisins and prepare them for sale. On February 15 of every year, the RAC establishes the final "free" and "reserve percentages" that will apply to all handlers and, by extension to all raisin growers. 7 C.F.R. § 989.54(d); *see Evans*, 74 Fed. Cl. at 557. The RAC establishes the "free tonnage" percentage based on its assessment of the quantity of raisins it believes the industry can sell worldwide. 7 C.F.R. § 989.54(a). The remainder of the raisins are designated as "reserve tonnage." Handlers pay raisin growers market prices only for the free tonnage; growers receive no payment from handlers for the reserve tonnage. *See Evans*, 74 Fed. Cl. at 557.

The handlers must physically segregate the "reserve tonnage" raisins ("reserve raisins") and hold them "for the account" of the RAC. 7 C.F.R. §§ 989.65, 989.66(a), (b)(1), (b)(4). Title to these raisins thus passes directly from the raisin growers to the

RAC.[4] *See Evans*, 74 Fed. Cl. at 557. Thereafter, the RAC controls the disposition of the reserve raisins entirely at its discretion. It "may, after giving reasonable notice, require a handler to deliver to it, or to anyone designated by it, . . . the reserve tonnage raisins held by such handler." 7 C.F.R. § 989.66(b)(4). It may then direct the reserve raisins wherever it sees fit. For example, the RAC may instruct that they be sold or sent as gifts to U.S. agencies, foreign governments, or charitable organizations. *See id.* § 989.67(b)(2)-(4). Alternatively, the RAC may sell reserve raisins to handlers for resale in export markets. *See id.* § 989.67(c)-(e). After an initial delay, it also may allow handlers to sell reserve raisins as free tonnage in

---

[4] In its brief in opposition to the petition for certiorari, the government implausibly contended that the Order does not divest growers of title to the reserve raisins. USDA Br. in Opp'n at 6. As Petitioners demonstrated, however, the government had previously adhered to the opposite position—that title to the reserve raisins "passes, as a matter of law from the producer to the Raisin Administrative Committee." Pet'rs' Br. at 23 (quoting Tr. of Oral Arg., *Horne v. U.S. Dep't of Agric.*, 133 S. Ct. 2053 (2013) (No. 12-123)). Regardless, even if formal title to the reserve raisins remained with the growers, there can be no dispute that physical possession of and control over those raisins do not. No more is required to trigger entitlement to just compensation under the Fifth Amendment. *See id.* at 24 (citing, *inter alia*, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 431 (1982)).

domestic markets. *See id.* § 989.54(g). Even for these raisins, growers receive no direct, market-based compensation.[5]

Although raisin handlers are the parties to whom the Raisin Marketing Order technically applies, handlers suffer comparatively minimal burdens in connection with the reserve requirement. Handlers receive direct compensation for segregating and storing the reserve tonnage each year, *see* 7 C.F.R. § 989.66(f), as well as generous export subsidies in many cases, *see id.* § 989.67(c)-(e). Thus, many larger raisin growers have integrated their businesses such that they also act as raisin handlers. Larger growers often "own, lease, or control substantial raisin acreage and are vertically integrated with their own packinghouses," enabling them "to store but not deliver their raisins at their

---

[5] In computing the annual reserve tonnage, the RAC employs a method that "arbitrarily reduces the prior year's shipments by 10 percent." Clyde E. Nef, *The Raisin Industry Federal Marketing Program*, *in Raisin Production Manual* 9, 11 (L. Peter Christensen ed., 2000); *see* 7 C.F.R. § 989.54(a) ("The trade demand shall be 90 percent of the prior crop year's shipments of free tonnage and reserve tonnage sold for free use for that varietal type."). The RAC then offers the additional stock to handlers to enable them to maintain the same shipment volume as the previous year and to allow for market growth. "Any unsold tonnage from these offers remains in the reserve pool," *Raisin Production Manual* at 11, and therefore provides no separate basis for compensation to raisin growers.

packinghouses" and thereby "bridge between crop years," choosing when to deliver a particular year's crop based on the free tonnage levels. Sun-Maid Petition at 5. As handlers, these operations may also receive significant export subsidies from the RAC. *See* 7 C.F.R. § 989.67(c)-(e). Smaller, independent growers typically do not have the resources to integrate their businesses in this way and do not participate in the export market. Thus, "[t]he integrated packer-grower simply has the ability to take advantage of the Order in a way that small growers realistically cannot." Sun-Maid Petition at 5.

2. In stark contrast to handlers, raisin growers receive no guaranteed level of compensation for the labor and resources they dedicate to the reserve raisins. Rather, they are entitled only to an "equitable distribution of the net return" from the sale of those raisins. 7 U.S.C. § 608c(6)(E); *see* 7 C.F.R. § 989.66(h). However, it is only after the RAC's administrative costs have been paid that raisin growers receive, on a pro rata basis, any remaining proceeds. *See* 7 U.S.C. § 608c(6)(E); 7 C.F.R. §§ 989.53(a), 989.66(h). Including compensation to handlers for storage and other services, as well as export subsidies, the RAC's administrative costs total tens of millions of dollars. *See* RAC, *Statement of Disposition & Grower Equity* (Jan. 31, 2013) (2008-2009 reserve); RAC, *Statement of Disposition & Grower Equity* (Apr. 1, 2011) (2007-2008 reserve); RAC, *Statement of Disposition & Grower Equity* (Feb. 19, 2009) (2006-2007 reserve); RAC, *Statement of Disposition & Grower Equity* (Feb. 19, 2009) (2005-2006 reserve); RAC, *Statement*

of Disposition & Grower Equity (June 23, 2008) (2003-2004 reserve); and RAC, *Statement of Disposition & Grower Equity* (2002-2003 reserve) (reflecting reserve pool expenses ranging from $26,223,885 to $110,812,968). In years for which no proceeds remain, raisin growers receive no compensation at all for the reserve raisins. Indeed, raisin growers received no compensation at all in the last five years in which the RAC actually imposed a reserve requirement.

The following chart presents, for each of the past six years in which the RAC imposed a reserve requirement, the "reserve percentage," or the percentage of growers' raisins required to be set aside for the RAC; the "sales per reserve ton," or the per-ton amount earned on the RAC's sale of reserve raisins; and the "final grower equity," or the compensation growers ultimately received per ton of their reserve raisins:

Crop Year	Reserve Percentage	Sales Per Reserve Ton	Final Grower Equity
2002-2003	47.0 percent	$ 649.47	$ 27.45
2003-2004	30.0 percent	$ 1,249.30	$ 0.00
2005-2006	17.5 percent	$ 1,262.93	$ 0.00
2006-2007	10.0 percent	$ 1,241.84	$ 0.00
2007-2008	15.0 percent	$ 1,313.75	$ 0.00
2008-2009	13.0 percent	$ 505.79	$ 0.00

See RAC, *Statement of Disposition & Grower Equity* (Jan. 31, 2013) (2008-2009 reserve); RAC, *Statement*

of Disposition & Grower Equity (Apr. 1, 2011) (2007-2008 reserve); RAC, *Statement of Disposition & Grower Equity* (Feb. 19, 2009) (2006-2007 reserve); RAC, *Statement of Disposition & Grower Equity* (Feb. 19, 2009) (2005-2006 reserve); RAC, *Statement of Disposition & Grower Equity* (June 23, 2008) (2003-2004 reserve). The equitable share of the proceeds to which the Growers are entitled thus affords no reliable basis for any compensation, let alone just compensation.

Nor do growers receive any other supposed "benefit" from the Raisin Marketing Order. The Order was ostensibly intended "to stabilize producer returns by limiting the quantity of raisins sold by handlers in the domestic competitive market." *Lion Raisins, Inc. v. United States*, 416 F.3d 1356, 1359 (Fed. Cir. 2005). In its brief in opposition to certiorari, the government contended that the "price-stabilization purposes of the marketing order" had "directly benefited petitioners and other producers." USDA Br. in Opp'n at 25. But the government failed to inform the Court that, even though the long-employed reserve formula dictated that a reserve requirement was necessary, the RAC declined to impose a reserve requirement in each of the past five crop years, thus disproving the assertion that the reserve requirement reflects any economic need. Indeed, Petitioners and other producers have fared well in recent years without government intervention in the market. For the past five years, the raisin industry has successfully marketed its 100 percent free tonnage, *see* Sun-Maid Petition at 6, and for the past two seasons, the industry has managed

to sell the entirety of the crops it produced, *see* Dan Malcolm, *California Raisin Growers Benefit from Sun-Maid Work*, American Vineyard, Jan. 2015, at 18.

Amici Growers' circumstances have markedly improved during this time as well: In the absence of a reserve requirement since 2010, there is "more money coming in," App. A at 14a, and certain Growers have been able to pay farming expenses without taking out personal loans, *id.* at 12a; others can now direct resources toward vine replacements, ground improvements, and efforts to save vines from pest destruction, *id.* at 5a, or toward other improvements in production, including transitioning from hand picking to mechanical harvesting, *id.* at 3a. As one Grower explains, "[i]t is nice to get 100 percent of your crop in income." *Id.* at 9a. As long as the Raisin Marketing Order still stands, however, significant economic uncertainty exists, as the RAC retains the right to impose a reserve requirement year-to-year.

The contention of the panel and the government that the Raisin Marketing Order confers some "benefit" on raisin growers through supposed market stabilization is thus simply untrue, as evidenced by robust sales in the absence of a reserve requirement in recent years. Even if the Order was intended "to stabilize producer returns," *Lion Raisins*, 416 F.3d at 1359, its primary effect has been to introduce substantial uncertainty in grower returns over the years. *See infra* at 17-18. Moreover, even assuming raisin growers would benefit from market

stabilization, the Raisin Marketing Order is ill-designed to achieve that end. A simple restriction on the sale of raisins, akin to restrictions set forth in marketing orders for other crops, could achieve that purpose, without the need to actually "set aside" raisins for the RAC's disposal at below-market prices through government programs or subsidized exports. Regardless, any such "benefit" would not as a matter of law constitute "just compensation" under the Takings Clause, as explained in Part II.

B. The Growers Did Not Choose The Burden Of The Raisin Marketing Order.

To the extent the panel viewed the Raisin Marketing Order as imposing some burden rather than simply conferring a benefit on raisin growers, it blithely asserted that raisin growers could "avoid" that burden "by . . . planting different crops, including other types of raisins, not subject to this Marketing Order or selling their grapes without drying them into raisins." *See* Pet. App. at 26a. The suggestion that Petitioners and Growers can avoid the draconian burdens of the Raisin Marketing Order simply by choosing to abandon or replace their raisin vineyards reflects a fundamental misunderstanding of their raisin-growing enterprises.

A raisin vineyard is a long-term investment; accordingly, the Growers have dedicated considerable amounts of time, money, and effort to their vineyards. For many Growers, their vineyards represent a much deeper personal investment as well. Passed down over generations, the vineyards

themselves and the skills the Growers developed while tending them comprise a livelihood that the Growers should not have to abandon in order to avoid uncompensated takings of the literal fruits of their labors.

Overall, the U.S. raisin industry consists of some 3,000 growers located within the central San Joaquin Valley near Fresno, California. *See* California Raisins, The California Raisin Industry, http://calraisins.org/about/the-raisin-industry/ (last visited Mar. 5, 2015). These growers cultivate approximately 200,000 acres and produce approximately 350,000 tons of raisins in total each year, *see id.*, which amounts to almost 100 percent of the raisins produced in the United States and about 40 percent of raisins produced globally, *see* William L. Peacock & Frederick H. Swanson, *The Future of California Raisins Is Drying on the Vine*, 59 Cal. Agric., no. 2, Apr.-June 2005, at 70, *available at* http://ucanr.edu/datastoreFiles/391-325.pdf. Over 90 percent of these raisins are of the "Thompson Seedless" variety, *see id.*, a variety subject to the Raisin Marketing Order, *see* 7 C.F.R. § 989.166.

The Growers' vineyards range from 15 to 240 acres. Notwithstanding this relatively small scale, the Growers bring significant skill and experience to their operations. On average, the thirty-three Growers who are *amici* here have spent over 30 years in the industry, and some more than 60. Most carry on raisin-growing businesses from prior generations. Five are third-generation raisin growers; three are fourth-generation raisin growers; one is a fifth-

generation grower; and two continue family businesses of over 100 years. *See* App. A at 2a-4a, 6a-7a, 9a-10a, 12a, 14a; *see also* L. Peter Christensen, *Background and Resource, in Raisin Production Manual* 7 (L. Peter Christensen ed., 2000) ("Originally, most raisin farms were family operations consisting of 20 to 40 acres These origins are reflected in the industry today, with many family-oriented, relatively small farms still in existence.").

The length of time the Growers and their families have been engaged in the raisin growing business reflects both the substantial outlays required to establish a vineyard and the intensive nature of the cultivation and harvest of raisins. A vineyard is a "long-term investment" because it typically takes at least three years before a vineyard will produce a commercial crop. Robert H. Beede & L. Peter Christensen, *Planting a Raisin Vineyard, in Raisin Production Manual* at 64. Even after the initial planting, raisin vineyards require careful management on an ongoing basis. Each year the Growers spend, on conservative estimates, an average of nearly $2,000 per acre to cultivate the grapes for their raisin crops. *See generally* App. A.[6]

---

[6] *See also, e.g.*, University of California at Davis Cooperative Extension, *Sample Costs to Produce Grapes for Raisins* 16 (2006) (estimating costs at between $3,338 and $3,668 per acre), *available at* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCgQFjAB&url=ht

Their determinations of how much to invest in the cultivation of a given year's raisin crop entails experience-informed consideration of weather- and harvest-related risks.

When the Growers' raisin crops are ready for harvesting in late August and early September, *see* L. Peter Christensen, *Raisin Grape Varieties*, *in Raisin Production Manual* at 38-39 (describing harvest of Thompson Seedless grapes), the Growers undertake significant additional efforts to collect and dry the raisins before sending them to handlers for packing. Although new harvesting methods may be emerging, "[t]he traditional method of hand-harvesting and drying grapes on trays for natural raisins has changed little over the past hundred years." Peacock & Swanson, 59 Cal. Agric., no. 2, at 70. "This process is labor intensive, requires close supervision and experienced management, and involves weather risks." *Id.* Indeed, California raisin harvesting "has traditionally been considered the most labor-intensive activity in North American agriculture." *California: Raisins, Parlier*, Rural Migration News, Apr. 2005, *available at* https://migration.ucdavis.edu/rmn/more.php?id=976_0_2_0.

---

tp%3A%2F%2Fcoststudies.ucdavis.edu%2Ffiles%2Fgrraisctoldeqsjv06.pdf&ei=2q4yVKr9CNHlsAS-6oD4Dw&usg=AFQjCNEID0bMGruMQfQ9pXm0FHYHxxFUBQ&sig2=XN7jzTx20A3Pl9R_0Ozlrg&bvm=bv.76802529,d.cWc.

Raisin growers thus make substantial initial outlays and assume significant risks well before early October, when they first receive notice of the likely reserve tonnage requirement for the year's crops. *See* 7 C.F.R. § 989.54(b) (requiring announcement of preliminary free and reserve percentages by October 5 of each crop year, with a limited exception). By the time the RAC publishes the final "reserve tonnage" requirement in February, *see* 7 C.F.R. § 989.54(d), the Growers have not only dedicated considerable amounts of time, money, and effort to the production of their raisin crops, but also brought their experience to bear in careful crop management throughout the production process. Accordingly, the Growers reasonably expect to reap the full rewards of their investment and labor on the market.

When it is imposed, the "reserve tonnage" requirement decimates those expectations. In the two crop years at issue in Petitioners' case, 2002-2003 and 2003-2004, the reserve requirement took 47 percent and 30 percent of the Growers' total crops, respectively. *See* Pet. App. 179a-180a. Thus, the Growers essentially relinquished to the government one out of every two of the raisins they cultivated and harvested one year, and one out of every three raisins the next year. *See also id.* at 180a n.12 (citing 2005 reserve requirement of 17.5 percent).

As a result of the threat of a reserve requirement from year-to-year, the Growers have faced significant economic uncertainty and, ultimately, loss. *See* App. A at 1a (stating that even absent a reserve

requirement since 2010, "the cloud of complexity is still looming"); *id.* at 10a (explaining that the possibility of a reserve requirement "has made farming very unpredictable and unreliable."). Because of the wide-ranging differences in reserve requirements from year to year, "[p]roducers have great difficulty in projecting potential future revenue." Sun-Maid Petition at 6. In one Grower's words, these differences make "crop budgeting . . . impossible" and "[a]nticipating a profit, even when harvest costs are closely regulated, . virtually impossible." App. A at 13a. "This substantial uncertainty makes it harder for growers, particularly those with business operations that are smaller or not vertically integrated, to obtain credit financing to cover production expenses." Sun-Maid Petition at 6. Or, as another Grower explains, "banks don't like to deal with raisin farmers because of the lack of security" resulting from the Raisin Marketing Order. App. A at 1a.

The difficulties many of the Growers report in obtaining bank loans necessary to fund the cultivation of the next year's crops, *see generally* App. A, exacerbate the direct economic losses they already face from surrendering part of their crop under the Order. In general, the Raisin Marketing Order "drastically lowers . . . farm [and] family income," *id.* at 9a, makes it "difficult to make ends meet," *id.* at 2a, and denies the Growers the opportunity to "plan a future to improve [their] quality of life," *id.* at 4a. If the RAC were to impose reserve requirements in the coming years, one Grower would have to sell his vineyard and "could

not recommend to [his] kids or grandchildren to farm raisins." *Id.* at 7a.

The panel's thoughtless suggestion that the Growers could avoid this blow to their livelihoods simply by growing different crops does not reflect reality. Given the accretive personal and financial resources the Growers have devoted to their raisin crops over the years, abandoning those crops would be a significant sacrifice. Moreover, such a course of action would prove financially prohibitive for most Growers. In contrast to "row" crops such as corn or wheat, raisin vineyards are difficult and costly to uproot and replace. Many Growers estimate that it would cost hundreds of thousands of dollars to replace their entire raisin crops with alternative crops, not accounting for the amount of time they would have to wait before the new crops began to yield a return. *See generally* App. A. The panel's asserted "choice" is thus a highly costly one at both ends, and one that implicates deep personal attachments to an inherited way of life. Therefore, the panel could not reasonably have expected Petitioners or the Growers to relinquish that way of life, even if doing so would enable them to avoid the exceedingly onerous (and weakly justified) burden imposed by the Raisin Marketing Order.

As Justice Scalia observed during oral argument in a prior iteration of this case, the choice presented by the Raisin Marketing Order amounts to "your raisins or your life." Tr. of Oral Arg. at 31, *Horne v. U.S. Dep't of Agric.*, 133 S. Ct. 2053 (2013) (No. 12-123) (Scalia, J.). In view of the actual conditions the

Growers face under the Raisin Marketing Order, the panel's conclusion that Petitioners, and likewise the Growers, either receive some benefit or voluntarily accept the burdens of that Order simply by "choosing" to grow raisins cannot stand.

II. Contrary To The Panel's Decision, The Fifth Amendment Commands That The Growers Receive Just Compensation When The Government Takes Their Raisin Crops.

The permanent, physical segregation of a portion of Petitioners' and the Growers' raisin crops "for the account" of a government entity constitutes a *per se* taking for which Petitioners and Growers are constitutionally entitled to just compensation. This Court's precedent supports that conclusion, and other courts have accordingly embraced it. In contrast, the Ninth Circuit panel ultimately concluded that the reserve requirement did not effect a taking because "[a]t bottom" it was just "a use restriction applying to the Hornes insofar as they voluntarily choose to send their raisins into the stream of interstate commerce." Pet. App. 25a. But the choice to exercise one of the most fundamental property rights in the bundle protected by the Fifth Amendment—the right of alienation—cannot be conditioned upon the surrender of the right to just compensation.[7]

---

[7] The right of alienation has long occupied a central place among the bundle of property rights the Fifth Amendment protects. *See, e.g., Hodel v. Irving*, 481 U.S.

The panel's erroneous "use restriction" holding rests on two bases, neither of which is defensible. First, the panel apparently believed that the Fifth Amendment's categorical protections apply only to real and not personal property, and therefore a taking of personal property was not a taking at all. Second, the panel found no problem with the taking because it reasoned that Petitioners actually benefitted from surrendering their personal property to the government without just compensation. This Court should reject both bases.

1. As Petitioners capably explain, the distinction drawn by the panel between real and personal property lacks support in the case law, *see* Pet'rs' Br. at 33-36, and the historical origins of the Fifth Amendment, *see id.* at 36-39. But the panel's distinction also makes no sense in the context of this case. The Growers unquestionably have title to their raisin crops as personal property under California law. *See* Cal. Rev. & Tax. Code § 6016 ("'Tangible personal property' means personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses."); Cal. Com. Code § 2105(1) (defining "[g]oods"); *see also Stop the Beach Renourishment,*

704, 716 (1987) ("[T]he right to pass on property has been part of the Anglo-American legal system since feudal times."); William Blackstone, 2 *Commentaries* *447 ("Where the vendor hath in himself the property of the goods sold, he hath the liberty of disposing of them to whomever he pleases, at any time, and in any manner.").

Inc. v. Florida Dep't of Envtl. Prot., 560 U.S. 702, 707 (2010) ("Generally speaking, state law defines property interests."). Pursuant to the Raisin Marketing Order, the Growers must transfer title to the RAC for a percentage of their raisins every year the RAC imposes a reserve requirement. A transfer of title from the Growers to the federal government unquestionably deprives the Growers of their property. Thus, characterizing the raisins as "personal property" does not make the taking of the raisins any less a taking.

Moreover, the panel's semantics notwithstanding, there is no practical difference between a "reserve tonnage" of the Growers' raisins and a reserve acreage of the Growers' vineyards.[8] If the Raisin Marketing Order specified a number of acres of land—that is, real property—that the Growers were required to cordon off from the acres from which they could sell raisins on the free market, then the panel

---

[8] Likewise, there is little practical difference between demanding a certain percentage of growers' raisins and demanding a certain percentage of the proceeds from the sale of those raisins. *See Cerajeski v. Zoeller*, 735 F.3d 577, 580, 583 (7th Cir. 2013) (holding that the State's "confiscation" of interest in a bank account was a categorical taking, likening the State to a neighbor who takes the apples from one's apple orchard). On the continuum from land to the products of that land to the proceeds from the sale of those products, there is no basis for the exclusion of the products alone from the Fifth Amendment's categorical protection.

would have been forced to reach the opposite conclusion. In that case, there would be no plausible distinction whatsoever between the Raisin Marketing Order and the taking this Court found in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), where state law had required a landlord to permit cable installations on his rental property. Concluding that the cable installations were "a minor but permanent physical occupation of an owner's property," the Court held that they constituted a taking and therefore entitled the landlord to compensation. *See Loretto*, 458 U.S. at 421. No matter how small the reserve requirement, therefore, an order mandating that the Growers physically cordon off part of their acreage for the government's use would constitute no less of a "physical occupation" than the cable installation requirement in *Loretto*.

Equally analogous to the cable installation requirement in *Loretto*, the "reserve tonnage" requirement cuts through every strand in the traditional bundle of property rights—ownership, possession, use, and disposal—that the Growers hold in the reserve raisins. The Growers relinquish their title to, and physical possession of, the reserve raisins to the government, and they lose control over the use and disposal of the raisins from that point on. "[S]uch a physical occupation of property is," quite simply, "a taking." *Loretto*, 458 U.S. at 421. The fact that the Growers may receive some compensation for the reserve raisins, contingent on factors entirely beyond their control, in no way diminishes the taking that has occurred; it only

raises the question of whether the offered compensation is just.

2. The Ninth Circuit's conclusion that the Raisin Marketing Order is a valid "use regulation" rather than a "physical occupation" because of some purported benefit to the raisin growers is no more defensible. Pet. App. at 22a (finding that the reserve raisins' "disposition, while tightly controlled, inures to [Petitioners'] benefit"). This Court has never endorsed the argument that a nebulous (and here, utterly dubious) "benefit" can negate the fact that a taking has occurred or substitute for the just compensation required by the Fifth Amendment. Indeed, if that were the case, the scheme specifically proscribed in *Loretto*—the "requisition [of] a certain number of apartments" in a rental building "as permanent government offices," 458 U.S. at 439 n.17—would be permissible provided that the government's occupation constricted the rental market supply and thereby propped up rental prices to the benefit of the landlord. As the Court concluded in *Loretto*, however, "a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." *Id.* Accordingly, even though "*Loretto* specifically preserve[d] the state's 'substantial authority' and 'broad power to impose appropriate restrictions upon an owner's use of his property,'" Pet. App. 22a (quoting *Loretto*, 458 U.S. at 441), it did not do so at the expense of the Fifth Amendment.

This Court has made clear that there is no "blanket exception to the Takings Clause whenever

Congress exercises its Commerce Clause authority." *Kaiser Aetna v. United States*, 444 U.S. 164, 172 (1979). The Ninth Circuit panel's attempt to contort the Raisin Marketing Order into a mere "use restriction," or a condition on entry into interstate commerce, *see* Pet. App. at 25a, amounts to a rejection of that statement. *See Loretto*, 458 U.S. at 425 ("It is a separate question . . . whether an otherwise valid regulation so frustrates property rights that compensation must be paid."). In contrast, the Eleventh Circuit has appropriately recognized that "[c]haracterizing [a] mandatory access provision as a regulatory condition, even one allegedly designed to foster competition, cannot change the fact that it effects a taking by requiring a utility to submit to a permanent, physical occupation of its property." *Gulf Power Co. v. United States*, 187 F.3d 1324, 1331 (11th Cir. 1999) ("However laudatory its motive, Congress' power to regulate utilities does not extend to taking without just compensation the right of a utility to exclude unwanted occupiers of its property."). This Court should validate the Eleventh Circuit's reasoning and confirm that when the government takes title to, and physical possession of, property—whether real or personal, and regardless of the regulatory justification—a taking has occurred and just compensation must be paid.

III. If Affirmed, The Ninth Circuit's Decision Could Have Sweeping Ramifications With Debilitating Impacts On Agricultural And Other Small Producers.

Though unique in certain respects, the Raisin Marketing Order bears resemblance to many other agricultural orders with significant impacts in California. Should the Court affirm the panel's erroneous Takings Clause analysis, that analysis could infect regulation of other crops upon which the region is heavily—and proudly—dependent. The decision thus holds much greater significance than its immediate outcome for Petitioners and the Growers.

The Raisin Marketing Order imposes the most "draconian" burden of all the agricultural marketing orders now in effect. *Evans*, 74 Fed. Cl. at 555. Unlike the marketing orders for almonds, walnuts, tart cherries, prunes, and spearmint oil. for example, it "effects a direct transfer of title of a producer's 'reserve tonnage' raisins to the government, and it requires physical segregation of the reserve-tonnage raisins held for the government's account." *Id.* at 558 (citing 7 C.F.R. §§ 989.54, 989.65, 989.66(b)(2), (4)); *cf.* 7 C.F.R. § 981.52 (requiring almond handlers to "hold in [their] possession or under [their] control, in proper storage for the account of the Board, the quantity of almonds necessary to meet his reserve obligation"); *id.* §§ 993.54, 993.57 (imposing similar requirement on prune handlers); *Prune Bargaining Ass'n v. Butz*, 444 F. Supp. 785, 788-89 (N.D. Cal. 1975) ("These reserve prunes are not physically

segregated from the salable prunes, however, and thus the reserve is, in fact, a paper reserve."), *aff'd*, 571 F.3d 1132 (9th Cir. 1978).

Thus, holding that the reserve requirement under the Raisin Marketing Order effectuates an unconstitutional taking would not necessarily implicate other reserve programs. Nonetheless, the Raisin Marketing Order shares certain features with marketing orders for other agricultural products. *See Evans*, 74 Fed. Cl. at 555. The RAC is one of many industry committees with the power to sell or dispose of reserves held for the government's account. *See* 7 C.F.R. §§ 981.66(a) (almonds), 984.56(a) (walnuts), 993.65(a) (prunes). Additionally, like raisin producers, producers of almonds, walnuts, and prunes receive only pro rata shares of any net proceeds from the sale of their reserve crops. *See* 7 C.F.R. §§ 981.66(e) (almonds), 984.56(e) (walnuts), 993.65(e) (prunes).

The panel's decision affords no basis for distinguishing the marketing orders for other crops from the Raisin Marketing Order for purposes of its Takings Clause analysis. Therefore, it would require little effort for the Department of Agriculture to ratchet up the marketing restrictions for other crops to the most "draconian" level, *Evans*, 74 Fed. Cl. at 555, and take title to and physical possession of these other crops' reserves as well. And as Petitioners noted below, the panel's reasoning would extend beyond agricultural markets and allow the government to "require a manufacturer of microchips to turn over 50 percent of its manufactured goods for

government use, if the manufacturer sells those chips in interstate commerce." Petition for Panel Rehearing or Rehearing En Banc at 21, *Horne v. U.S. Dep't of Agric.*, 673 F.3d 1071 (9th Cir. 2012) (No. 10-15270), ECF No. 30-1. The potential scope of the panel's erroneous analysis underscores its errors.

CONCLUSION

As one of *amici* expresses, the Growers simply want independence and a "chance to live the American dream" free of the burdens imposed by the Raisin Marketing Order. App. A at 8a. For the foregoing reasons and those set forth in the brief of Petitioners, the Court should reverse the judgment of the Ninth Circuit.

Respectfully submitted,

CAROLINE M. DECELL
JENNER & BLOCK LLP
919 Third Ave.
New York, NY 10022
(212) 891-1600

JULIE M. CARPENTER
JESSICA RING AMUNSON
Counsel of Record
JENNER & BLOCK LLP
1099 New York Ave., NW
Washington, DC 20001
(202) 639-6000
jamunson@jenner.com

Counsel for Amici Curiae

March 9, 2015

APPENDIX

APPENDIX A

INDEPENDENT RAISIN GROWERS[1]

1. Bryan Arabian operates a 150-acre raisin vineyard under the name Arabian Farms. He has been producing raisins for 16 years, and his family has been in the raisin growing business since 1949. From the time Mr. Arabian completes one year's raisin harvest to the time the next harvest begins, he spends approximately $2,200 per acre on cultural costs.[2] Mr. Arabian estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $10,000 per acre. As a result of the Raisin Marketing Order, Mr. Arabian has lost 20 raisin acres in the last twenty-plus years. The possibility of a reserve requirement makes it "very difficult" for Mr. Arabian to obtain bank loans to finance his next crop season. Even in the absence of a reserve requirement since 2010, "the cloud of complexity is still looming," and "banks don't like to deal with raisin farmers because of the lack of security." Mr. Arabian believes that the "reserve is a scheme to help the handler" while "producers are left with little nothing to show for [their] hard labor and risk."

2. David Baer farms a 20-acre raisin vineyard. He has been producing raisins for over 30 years as a

---

[1] Surveys of the raisin growers from which these excerpts are taken are on file with the authors of this brief.

[2] "Cultural costs" include the costs of pruning, fertilizing, and irrigating the crop, as well as the costs of weed, insect, and disease control.

third-generation raisin grower. From the time Mr. Baer completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,250 per acre on cultural costs. As a result of the Raisin Marketing Order, Mr. Baer has lost approximately 20 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Baer to obtain bank loans to finance his next crop season. In general, the Raisin Marketing Order makes it "difficult to make ends meet."

3. Brent Bean operates a raisin vineyard under the name Bean & Sons. He is a fifth-generation raisin grower.

4. Jack Blehm farms a 60-acre raisin vineyard. He has been producing raisins for 43 years, and his family has been in the raisin growing business since 1942. From the time Mr. Blehm completes one year's raisin harvest to the time the next harvest begins, he spends approximately $3,800 to $4,200 per acre on cultural costs. Mr. Blehm conservatively estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $12,000 to $18,000 per acre. Mr. Blehm works a second job to help pay the bills and compensate for the loss of income resulting from the Raisin Marketing Order. "Losing 30 percent to 50 percent of any business is devastating," he explains. In the absence of a reserve requirement since 2010, however, Mr. Blehm's circumstances have improved.

5. Roger Blehm farms a 60-acre raisin vineyard. He has been producing raisins for 9 years, and his

family has been in the raisin growing business since 1942. From the time Mr. Blehm completes one year's raisin harvest to the time the next harvest begins, he spends approximately $3,800 to $4,200 per acre on cultural costs. Mr. Blehm estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $14,000 to $20,000 per acre. Mr. Blehm works a second job to help compensate for the loss of income resulting from the Raisin Marketing Order. In the absence of a reserve requirement since 2010, however, Mr. Blehm's circumstances have improved.

6. Michael J. Bopp operates a 160-acre vineyard under the name Mike Bopp Farms. He has been producing raisins since 1983 as a fourth-generation raisin grower. From the time Mr. Bopp completes one year's raisin harvest to the time the next harvest begins, he spends approximately $2,000 per acre on cultural costs. Mr. Bopp estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $5,000 per acre. The possibility of a reserve requirement makes it difficult for Mr. Bopp to borrow off of his potential income. In the absence of a reserve requirement since 2010, however, Mr. Bopp's circumstances have improved. He has been able to update his ranch and improve production by changing from hand picking to mechanical harvesting.

7. Earl O. Boyajian farms a 98-acre raisin vineyard. He has been producing raisins for 55 years, and his family has been in the raisin growing

business for 92 years. From the time Mr. Boyajian completes one year's raisin harvest to the time the next harvest begins, he spends $1,500 to $2,000 per acre on cultural costs. Mr. Boyajian estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $4,000 to $6,000 per acre. As a result of the Raisin Marketing Order, Mr. Boyajian has lost approximately 140 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it "very difficult" for Mr. Boyajian to obtain bank loans to finance his next crop season. Mr. Boyajian notes that under the Raisin Marketing Order, he "can never plan a future to improve [his] quality of life"—"[n]o truck, no equipment, no household improvements." He asks that the RAC "at least give" the growers "[their] cultural costs back."

8. Jack Cardwell farms a 34-acre raisin vineyard. He has been producing raisins for 10 years as a third-generation raisin grower. From the time Mr. Cardwell completes one year's raisin harvest to the time the next harvest begins, he spends approximately $900 per acre on cultural costs. Mr. Cardwell reports that no amount of money would enable him to remove raisin vineyard acreage and plant another crop amenable to his soils because he is 70 years old. As a result of the Raisin Marketing Order, Mr. Cardwell has lost approximately eight raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Cardwell to obtain bank loans to finance his next crop season. Mr. Cardwell must rely on social security and his wife's pay.

9. Arleen G. Daggs farms a 20-acre raisin vineyard. Her family has been in the raisin growing business since 1917. From the time Ms. Daggs completes one year's raisin harvest to the time the next harvest begins, she spends approximately $2,000 per acre on cultural costs. Ms. Daggs estimates the cost of removing her raisin vineyard acreage and planting another crop amenable to her soils would be a minimum of $25,000 per acre, not including the loss of income for three years. Ms. Daggs has lost approximately 40 raisin acres in the last twenty-plus years, due to two bankruptcies and a foreclosure. Ms. Daggs works a second job to help pay some of the expenses associated with the culture and harvest of the crops. She notes that "since 1964" she has always had to have a second job, whereas "[b]efore that the farm raised the family." Without a very large farming operation and significant diversification, she concludes, raisin farming has become only a hobby. In the absence of a reserve requirement since 2010, however, Ms. Daggs' circumstances have improved. She can now direct resources toward vine replacements, ground improvements, and efforts to save vines from pest destruction.

10. Harris Daggs farms a 77.5-acre raisin vineyard. He has been producing raisins for 51 years, and his family has been in the raisin growing business for 100 years. From the time Mr. Daggs completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,000 per acre on cultural costs. Mr. Daggs estimates the cost of removing his raisin vineyard acreage and

planting another crop amenable to his soils would be $175,000. As a result of the Raisin Marketing Order, Mr. Daggs has been forced to hold two jobs to support the farm.

11. David Flagler farms a 35-acre raisin vineyard. He has been producing raisins since 1983 as a fourth-generation raisin grower. From the time Mr. Flagler completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,250 per acre on cultural costs. Mr. Flagler estimates the cost of removing his raisin vineyard acreage would be $2,500 per acre. As a result of the Raisin Marketing Order, Mr. Flagler has lost 300 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Flagler to obtain bank loans to finance his next crop season. In the absence of a reserve requirement since 2010, however, Mr. Flagler's circumstances have improved.

12. Walter George Flagler operates a 100-acre raisin vineyard under the name Flagler Farms. He has been producing raisins for 55 years as a second-generation raisin-grower. From the time Mr. Flagler completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,500 per acre on cultural costs. Mr. Flagler estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $2,500 per acre. As a result of the Raisin Marketing Order, Mr. Flagler has lost 100 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Flagler to

obtain bank loans to finance his next crop season. In the absence of a reserve requirement since 2010, however, Mr. Flagler's circumstances have improved.

13. Chris C. Gauss operates a 40-acre raisin vineyard under the name Gauss Ranches. He has been producing raisins for 38 years, and his family has been in the raisin growing business since 1907. From the time Mr. Gauss completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,500 per acre on cultural costs. Mr. Gauss estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $6,000 per acre. The possibility of a reserve requirement makes it difficult for Mr. Gauss to obtain bank loans to finance his next crop season. Mr. Gauss's circumstances have improved in the absence of a reserve requirement since 2010. If the RAC were to impose reserve requirements in the coming years, however, Mr. Gauss would have to sell the vineyard and "could not recommend to [his] kids or grandchildren to farm raisins."

14. Harjinder S. Gill farms a 160-acre raisin vineyard. He has been producing raisins for 36 years as a first-generation immigrant. From the time Mr. Gill completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,500 per acre on cultural costs. Mr. Gill estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $5,000 per acre. As a result of the Raisin Marketing Order, Mr. Gill has lost 20 raisin acres in the last

twenty-plus years. He has not been turned down for a bank loan because his operation is diversified, but he notes that he "do[es] not even get [his] cost of production back" for the reserve raisins.

15. Robert Z. Gonzalez operates a 50-acre raisin vineyard under the name Gonzalez Farms. He has been producing raisins since 1966. From the time Mr. Gonzalez completes one year's raisin harvest to the time the next harvest begins, he spends approximately $3,000 per acre on cultural costs. Mr. Gonzalez estimates the cost of removing just 20 acres of his raisin vineyard and planting another crop amenable to his soils would be $850,000. As a result of the Raisin Marketing Order, Mr. Gonzalez has lost 20 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Gonzalez to obtain bank loans to finance his next crop season. Mr. Gonzalez expresses his desire for independence and "a chance to live the American dream."

16. Nick Goosev farms a 33-acre raisin vineyard. He has been producing raisins for 34 years, and his family has been in the raisin growing business for 60 years. From the time Mr. Goosev completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,000 per acre on cultural costs. Mr. Goosev estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $30,000 to $50,000. The possibility of a reserve requirement makes it difficult for Mr. Goosev to obtain bank loans to finance his next crop season. Under the Raisin

Marketing Order, Mr. Goosev can "barely make it every year." Since 2010, however, his circumstances have improved. "It is nice to get 100 percent of your crop in income," he reports.

17. Brad Hansen operates a 240-acre raisin vineyard under the name Brad Hansen Farm. He has been producing raisins for 34 years as a fourth-generation farmer. From the time Mr. Hansen completes one year's raisin harvest to the time the next harvest begins, he spends approximately $2,200 per acre on cultural costs. Mr. Hansen estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $6,000 per acre, and he notes that he would replace the raisin crop with almonds. The possibility of a reserve requirement makes it difficult for Mr. Hansen to obtain bank loans to finance his next crop season. In general, the reserve requirement "drastically lowers [his] farm/family income."

18. David Hernandez operates a 20-acre raisin vineyard under the name Mi Tierra Vineyard. He has been producing raisins for 13 years. From the time Mr. Hernandez completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,500 per acre on cultural costs. Mr. Hernandez estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $80,000. The possibility of a reserve requirement makes it difficult for Mr. Hernandez to obtain bank loans to finance his next crop season. In general, the possibility of a

reserve requirement "has made farming very unpredictable and unreliable."

19. David Horne farms a 55-acre raisin vineyard. He has been producing raisins since 1976 and has worked on raisin vineyards since childhood. From the time Mr. Horne completes one year's raisin harvest to the time the next harvest begins, he spends approximately $1,500 per acre on cultural costs. Mr. Horne estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $10,000 per acre. The possibility of a reserve requirement makes it difficult for Mr. Horne to obtain bank loans to finance his next crop season. In general, the possibility of a reserve requirement "makes everything so uncertain and worrisome." To compensate for the loss of income resulting from the Raisin Marketing Order, Mr. Horne worked a full-time job off the farm for many years. In the absence of a reserve requirement since 2010, however, Mr. Horne's circumstances have improved. "[Y]ear by year," things have been "getting better" and more "predictable."

20. Mike and Cheryl Jerkovich operated a 60-acre raisin vineyard under the name M-C Farms Inc. until they sold it on July 1, 2014. They had been producing raisins since 1960 as third-generation raisin growers. From the time the Jerkoviches completed one year's raisin harvest to the time the next harvest began, they spent approximately $2,000 to $3,000 per acre on cultural costs. The Jerkoviches estimate the cost of removing their raisin vineyard acreage and planting another crop amenable to their

soils would have been $10,000 per acre. The possibility of a reserve requirement made it difficult for them to obtain bank loans to finance their next crop season. As a result of the Raisin Marketing Order, the Jerkoviches lost 120 raisin acres in 2002 and ultimately had to sell the farm where Mike Jerkovich was raised.

21. Loren T. Linscheid operates a 40-acre raisin vineyard under the name Linscheid Organic Farms. He has been producing raisins since 1992, and his family has been in the raisin growing business for 60 years. From the time Mr. Linscheid completes one year's raisin harvest to the time the next harvest begins, he spends approximately $2,200 per acre on cultural costs. Mr. Linscheid estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $10,000 per acre. As a result of the Raisin Marketing Order, Mr. Linscheid has lost approximately 40 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Linscheid to obtain bank loans to finance his next crop season; in his experience, "no banks will look at a raisin farmer," and he has been turned down for loans "many times" in the past. He believes that "no one would go into [the] raisin business today with th[ese] . cultural costs and [this] economic climate."

22. Cheryl Miller farms a 40-acre raisin vineyard. She has been producing raisins for 20 years, and her family has been in the raisin growing business since 1917. From the time Ms. Miller

completes one year's raisin harvest to the time the next harvest begins, she spends approximately $2,000 per acre on cultural costs. In the absence of a reserve requirement since 2010, Ms. Miller's circumstances have improved.

23. Theresa and Thomas Ochoa operate a 30-acre raisin vineyard under the name Ochoa Farms. They have been producing raisins for 11 years as third-generation raisin growers. From the time the Ochoas complete one year's raisin harvest to the time the next harvest begins, they spend approximately $1,500 per acre on cultural costs. The Ochoas estimate the cost of removing their raisin vineyard acreage and planting another crop amenable to their soils would be $5,000 per acre. As a result of the Raisin Marketing Order, the Ochoas have suffered a loss of production because they were unable to afford necessary fertilizers. In the absence of a reserve requirement since 2010, however, their circumstances have improved. For example, they were able to pay their farming expenses without taking out a personal loan.

24. Gregory I. Patterson and Donna L. Patterson operate an 80-acre raisin vineyard under the name Abba's Acres. They have been producing raisins for 43 years, and their family has been in the raisin growing business for 103 years. From the time the Pattersons complete one year's raisin harvest to the time the next harvest begins, they spend approximately $220 per acre on cultural costs. The Pattersons estimate the cost of removing their raisin vineyard acreage would be $1,200 per acre. As a

result of the Raisin Marketing Order, the Pattersons have had to rent out 80 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for the Pattersons to obtain bank loans to finance their next crop season, and they have twice faced foreclosure. Furthermore, the possibility of a reserve requirement makes "crop budgeting . . . impossible" and "[a]nticipating a profit, even when harvest costs are closely regulated, . . . virtually impossible." In the absence of a reserve requirement since 2010, however, the Pattersons' circumstances have improved.

25. Tom Pavich and Frances Pavich operate an 80-acre raisin vineyard under the name FMP Vineyards. They have been producing raisins for 25 years as second-generation raisin growers, and their family has been in the business for 61 years. From the time the Paviches complete one year's raisin harvest to the time the next harvest begins, they spend approximately $2,500 per acre on cultural costs. The Paviches estimate the cost of removing their raisin vineyard acreage and planting another crop amenable to their soils would be $800,000. As a result of the Raisin Marketing Order, the Paviches have lost hundreds of raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for the Paviches to obtain bank loans to finance their next crop season, and they have been turned down for loans in the past. In an effort to sell all of the organic raisins they grow, the Paviches have been "forced to buy conventional

raisins to substitute for [their] organic raisins on years there was a reserve."

26. John Radovich operates a 15-acre raisin vineyard under the name Radovich Farms. He has been producing raisins for 24 years, and his family has been in the raisin growing business for over 50 years. From the time Mr. Radovich completes one year's raisin harvest to the time the next harvest begins, he spends approximately $5,000 to $8,000 per acre on cultural costs. Mr. Radovich estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $20,000, noting that he would have to wait until the new crop produces to reap any returns. The possibility of a reserve requirement also makes it difficult for Mr. Radovich to obtain bank loans to finance his next crop season. For many years under the Raisin Marketing Order, Mr. Radovich did not receive any payment for his reserve raisins, making it difficult to cultivate the following year's crop. In the absence of a reserve requirement since 2010, however, Mr. Radovich's circumstances have improved—there is "more money coming in." Yet if the RAC were to impose a reserve requirement in the coming years, it would be "impossible to keep [his] farm."

27. Leland Rebensdorf farms a 200-acre raisin vineyard. He has been producing raisins for 26 years as a third-generation raisin grower, whose family has been in the business for 93 years. From the time Mr. Rebensdorf completes one year's raisin harvest to the time the next harvest begins, he spends

approximately $2,660 per acre on cultural costs. Mr. Rebensdorf estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $3,925 per acre. The possibility of a reserve requirement makes it difficult for Mr. Rebensdorf to obtain bank loans to finance his next crop season. As a result of the Raisin Marketing Order, Mr. Rebensdorf has "been constantly struggling to pay back crop-line debts," and "those debts keep increasing." In the absence of a reserve requirement since 2010, however, Mr. Rebensdorf's circumstances are "somewhat better."

28. Marvin Schafer operates a 152-acre raisin vineyard under the name MP Schafer Farms. He has been producing raisins for 55 years, and his family has been in the raisin growing business since 1938. From the time Mr. Schafer completes one year's raisin harvest to the time the next harvest begins, he spends approximately $2,500 per acre on cultural costs. Mr. Schafer estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $10,000 per acre. As a result of the Raisin Marketing Order, Mr. Schafer has lost 50 raisin acres in the last twenty-plus years. Mr. Schafer notes that he served fifteen years on the RAC as an independent grower, but that he was unable to influence the board's direction, as "one vote against the packers did [not] change anything."

29. Walter A. Shubin operates a 20-acre raisin vineyard under the name Shubin Farms. He has been producing raisins for 65 years. From the time

Mr. Shubin completes one year's raisin harvest to the time the next harvest begins, he spends approximately $3,500 per acre on cultural costs. As a result of the Raisin Marketing Order, Mr. Shubin has lost approximately 180 raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Shubin to obtain bank loans to finance his next crop season, putting him into bankruptcy for seven years. Mr. Shubin and his wife have secured second jobs in order to keep their land and their home. In Mr. Shubin's view, the Raisin Marketing Order "destroyed" him.

30. Oleth Wayne Snell farms a 30-acre raisin vineyard. He has been producing raisins for 43 years as a second-generation raisin grower. From the time Mr. Snell completes one year's raisin harvest to the time the next harvest begins, he spends more than $1,500 per acre on cultural costs. Mr. Snell estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils would be $2,500. As a result of the Raisin Marketing Order, Mr. Snell has lost five raisin acres in the last twenty-plus years. The possibility of a reserve requirement also makes it difficult for Mr. Snell to obtain bank loans to finance his next crop season. As a result of the Raisin Marketing Order, Mr. Snell is "unable to sustain improvements." In the absence of a reserve requirement since 2010, however, Mr. Snell's circumstances have improved.

31. Tim Turner farmed 20 acres of raisin vineyard until eight years ago. His family had been

in the raisin growing business since 1958. As a result of the Raisin Marketing Order, Mr. Turner lost all 20 acres of his raisin vineyard. He replaced his raisin crops with almonds, for which he is never required to turn over "47 percent of [his] crop."

32. Peter Wolf operates a 205-acre raisin vineyard under the name Wolf Pack Organic. He has been producing raisins for 60 years, and his family has been in the raisin growing business for over 100 years. From the time Mr. Wolf completes one year's raisin harvest to the time the next harvest begins, he spends approximately $750 per acre on cultural costs. In the absence of a reserve requirement since 2010, Mr. Wolf's circumstances are "much" improved.

33. Steve J. Zupanovich farmed a 20-acre raisin vineyard. He had been producing raisins for 31 years as a second-generation raisin grower. Mr. Zupanovich estimates the cost of removing his raisin vineyard acreage and planting another crop amenable to his soils was over $15,000 per acre. The possibility of a reserve requirement made it difficult for Mr. Zupanovich to obtain bank loans to finance his next crop season. As a result of the Raisin Marketing Order, Mr. Zupanovich pulled out his 20-acre vineyard "to stop losing money and profits." He now farms almonds instead, but remarks that "[i]t is so sad," as he "loved the raisin farming industry."